REMARKS

Claims 1-21 were presented for examination and were pending in this application. In the latest Office Action, all of the claims were rejected. With this amendment, new claims 22-49 are presented.

Claims 1-21 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent 5,889,860 to Eller et al. Applicants respectfully traverse this rejection.

Claim 1 recites in part, "removing one or more selected segments of the assembly, to produce a specified data file," and further, "communicating the encoded or encrypted specified data file in a first selected communication channel and communicating the removed segments in a second selected communication channel." The claimed invention thus allows an assembly of information-bearing sounds to be divided into complementary segments. Once the assembly is divided, the different portions of the assembly can be delivered to a user at different times and/or through different communication channels. After receiving all of the segments, an entity can reconstruct the original assembly and access the information-bearing sounds.

In one specific example of an embodiment of the claimed invention, a user downloads a major portion of a large sound file onto a portable device. This download could take place over a high-bandwidth communication channel, such a broadband Internet connection. Because the user received most, but not all, of the sound file, the user cannot reconstruct the sound file to play it. Once authorized to play the sound file, for example after paying a fee, the user downloads the relatively small remaining portion

of the sound file, e.g., over a wireless connection. Once this remaining portion is received, the user decrypts and combines the portions of the sound file and plays it.

Although Eller describes the distribution of data, Eller's method and purpose are fundamentally different from those of the claimed invention. In Eller, a server distributes access software and partially encrypted musical scores to clients upon request. A client can sample the partially encrypted scores prior to consummating a transaction, such as a purchase of the scores. When a score is selected, the client enters payment information and is assigned a password that is specific to the client and transaction. The password functions as a decryption key to enable use of the musical score by the client using the access software.

Nowhere does Eller disclose or suggest dividing the media to be distributed (e.g., by removing segments from a media file). In fact, Eller discloses just the opposite. In Fig. 4 and col. 8, lines 35-44, an entire media file is compressed and encrypted (step 76), the entire file is transmitted to a client (step 86), and the entire file is then decrypted and decompressed by the client software (step 88). Moreover, because Eller does not disclose dividing the media, there is likewise no discussion of transmitting separated portions of the media or later combining the portions to reform the media. This contrasts with the claimed invention, in which the media file is divided to allow for portions of the file to be delivered separately. Because Eller's method does not divide a media file, it lacks the capability to send the file over two communication channels (e.g., sending a large portion over a high-bandwidth network and sending a smaller portion over a lower bandwidth network) or at different times (e.g., preloading a large portion,

and sending a smaller portion later). Furthermore, Eller must distribute an entire media file because Eller does not divide files into different portions. In contrast, removing segments from the media file, as claimed, provides an added layer of security above pure encryption.

The other rejected claims and the newly presented claims similarly recite limitations that are not described in Eller. For example, claim 12 recites, "using the data supplement to decode or decrypt the encoded or encrypted first data file and to position at least a first sequence and a second sequence, drawn from the second data file, within the first data file"; claim 21 recites, "removing one or more selected segments from the data file, to produce a specified data file having at least a first block and a second block"; claims 22 and 36 recite, "dividing the digital sound file into first and second data files"; and claims 30 and 44 recite, "combining the first and second data files to form the digital sound file." Accordingly, these independent claims, and the claims that depend from them, are novel over Eller.

It is believed that the application is in condition for allowance of all claims, and therefore a Notice of Allowance is respectfully requested. If the Examiner believes that for any reason direct contact with Applicant's representative would help advance the prosecution of this case to allowance, the Examiner is encouraged to telephone the undersigned at the number given below.

Respectfully submitted,
TIMOTHY R. BRATTON

Date: 9/30/02

By: Robt A. Hulse

Robert A. Hulse, Reg. No. 48,473
FENWICK & WEST LLP
Two Palo Alto Square
Palo Alto, CA 94306
Tel: (415) 875-2444
Fax: (415) 281-1350